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SENSITIVE
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SUBJECT: AMCHAM'S DISCONTENT: OECD BLACKLISTS COSTA RICA

1. (U) SUMMARY: Representatives of the American Chamber of Commerce (AmCham) met with DCM and Emboffs on April 17 to make a strong case against the recent OECD listing of Costa Rica on the tax haven "blacklist". They argued that the OECD's decision, which seemed to ignore the transparency of the 1991 Costa Rican-U.S. Tax Exchange Information Agreement (TEIA), was totally inappropriate: substantively incorrect, procedurally mishandled, and politically motivated. In addition, AmCham expressed dismay at how quickly Finance Minister Guillermo Zuniga acceded to the OECD listing by submitting a letter pledging that the GOCR would consider new legislation eliminating the need for a court order in order to open bank account records (a prominent OECD complaint). Ostensibly, Zuniga's action changed Costa Rica's OECD classification from the "black list" to the "grey list." AmCham -- deeply concerned about Costa Rica's reputation after the initial OECD announcement -- requested that the USG make a statement on Costa Rica's behalf. Post countered that Zuniga could raise the issue (at his discretion) in his meeting with Treasury officials on April 27 (on the margins of the World Bank meeting in Washington). Of note, the GOCR has not approached us about the "black list." See Action Request, para 11.
END SUMMARY.

AN EXPERIENCED DELEGATION

2. (U) Executive Director Lynda Solar, President Luis Gamboa, and ex-presidents Humberto Pacheco and Hernan Pacheco represented AmCham. Given that Humberto Pacheco negotiated the GOCR's TIEA in the 80's, he led AmCham's presentation. Pacheco seemed personally offended by the OECD's failure to acknowledge the effectiveness of the existing TIEA with the US (in effect since 1991) and emphasized the difficult five-year process of gaining legislative approval for the TIEA.

3. (U) The AmCham representatives' believed the OECD decision was based on the following factors (which also figured prominently in local media reporting about the black listing):

-- Costa Rica does not tax overseas income; and

-- Costa Rica requires a court order to be obtained in order to open any bank account records.

A DELEGATION WITH A MISSION

4. (U) AmCham adamantly disagreed with Costa Rica's classification as a tax haven by the OECD and pressed that there are "no technically valid reasons" to place Costa Rica on any tax haven

black list for three reasons:

-- Humberto Pacheco noted that a characteristic of a tax haven is low taxes. Quite the contrary, Costa Rica has a high tax regime;

-- Typical tax havens do not disclose tax information to the proper foreign counterparts. Pacheco claimed that Costa Rica consistently cooperated with U.S. counterparts, abided by the TIEA with the US, and exercised considerable control over its banking system through a regulator. (NOTE: Pacheco was unaware of any European disclosure requests. END NOTE.) He stated that, to his knowledge, never in the history of the TIEA with the United States had a request for information been denied. That is, judicial permission to access account information requested by the IRS has always been forthcoming; and

-- Costa Rica purposely designed its foreign tax regime to eliminate any appearance of "ring fencing," the issue of treating foreign source income differently, based on the residency of the taxpayer. The GOCR made a conscious decision to exempt taxation of all foreign source income for all taxpayers; thus, the law treats all taxpayers the same on this issue, which, in Pacheco's words, "is a choice that the government made. . . very wisely."

15. (SBU) In addition to the specific arguments on tax havens, AmCham cited Costa Rica's role as a good neighbor in the war against drugs and its fight against money laundering (it passed an anti-money laundering law earlier this year). AmCham further argued on the issue of the OECD's "Eurocentric" outlook. AmCham contended that the four countries on the OECD's black list -- Costa Rica, Uruguay, Malaysia, and Philippines -- had no ties to Europe. Thus, the OCED selected easy targets -- countries without direct European ties -- while overlooking European countries with questionable practices on bank secrecy, i.e. Belgium, Switzerland, and/or Luxembourg.

16. (SBU) AmCham disapproved of the "easy way out of this," as proposed by Finance Minister Zuniga, of simply proposing changes in the law regulating bank secrecy. Hernan Pacheco stated that AmCham strongly opposed eliminating the requirement that a judge review any request to open bank account records. Real or perceived abuses of the power to open bank records, Pacheco added, could do enormous harm to Costa Rica's democracy by altering Costa Ricans' perceptions of (and confidence in) government. Furthermore, it isn't clear how the government would truly guarantee the protection of privacy rights (without the requirement for a judicial order).

SAY IT ISN'T SO

17. (SBU) Humberto Pacheco argued that "the US should not have allowed [Angel] Guria [OECD Secretary General] to denigrate Costa Rica's reputation, since there is not a technical reason [for Costa Rica's presence on a black list]". Pacheco noted that the term "tax haven black list" still lingers in the air, in spite of the OECD elevating Costa Rica to the "grey list" five days after the "black list" announcement. Pacheco, the ex-TIEA negotiator, continued, "We're looking for a face-saving comment from the USG that helps clear Costa Rica's reputation." "Whatever the inner workings of this situation," Pacheco continued, "it was made to look like the G20 originated this." He suggested the following points: "Costa Rica has a TIEA with the US, has cooperated with the United States, and has never denied access to requested bank information."

18. (SBU) We listened to the presentation and noted that GOCR's delinquency on many issues, such as passing the anti-money laundering law, could have played a part in the OECD decision. Also, the DCM shared some of the findings provided informally to us by Treasury (TREAS) prior to the AmCham meeting: (1) TREAS is not comfortable with the OECD list-making, (2) nonetheless, TREAS generally agreed with OECD's underlying goals, and (3) the US Internal Revenue Service is reasonably comfortable with Costa Rica's cooperation through the framework of the TIEA. However, we were noncommittal about any USG statement in defense of Costa Rica, urged AmCham to voice their concerns directly to the GOCR, and suggested that Zuniga raise the issue at his meeting with Treasury on the margins of the IMF/World Bank meeting April 27. We also said we

would report AmCham's concerns to Washington.

¶9. (SBU) In one notable follow-up, Finance Vice Minister Jenny Phillips has invited Jeffrey Owens of the OECD's Center for Tax Policy and Administration to Costa Rica for a review session of the proposed legislation. The Ministry is girding itself for the session by publicly noting that several other Latin American countries also have bank secrecy laws, while stressing the GOCR's cooperation on information requests.

COMMENT AND ACTION REQUEST

¶10. (SBU) The GOCR evidently does not share AmCham's concerns and has not approached us. (In fact, we understand that Zuniga did not discuss the issue during his meetings in Washington). We respect AmCham's enthusiasm for (and expertise on) this issue, but believe that the GOCR decided to quickly dispense with the issue by promising to introduce legislation that would eliminate the need for a court order to open bank account records. We doubt such legislation could be passed quickly or easily (if at all) in Costa Rica, but the pledge alone seemed to have satisfied the OECD. Though an OECD designation can sully the reputation of a designee, we understand that a designation carries no penalties or sanctions.

¶11. (SBU) ACTION REQUEST: In the aftermath of the controversy (which we expect may re-surface here given the pending OECD review session, we remain interested in others' views of the transparency and fairness of the OECD ranking process. We would appreciate insight from the Department, USEU, and/or Treasury. We cannot judge from here, but AmCham makes a persuasive case against OECD's objectivity. Why, for example, did the OECD rating seem to discount the importance of a functioning TIEA between the GOCR and the USG?

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